1 UNITED STATES DISTRICT COURT	1 INDEX 2 WITNESS DIRECT CROSS REDIRECT RECROS 3 BRIAN WARNOCK 4 BY MR. CHARME 6
DISTRICT OF NEW JERSEY 2 CIVIL ACTION CASE NO. 2:08-CV-1567	5 BY MR. KERN 114
3 DR. FADI CHAABAN; DR. SABINO R. TORRE, DR. : CONSTANTINOS A. COSTEAS and DR. ANTHONY J. : 4 CASELJA, as Trustee of Diagnostic & Clinical:	7 <u>EXHIBITS</u> 8 EXHIBIT NO. DESCRIPTION PAGE
Cardiology, P.A Profit Sharing Plan,  5 Plaintiffs,	9 Warnock-1 Loan Amortization Schedule, 28 Four Pages
VS. 7 DR. MARIO A CRISCITO, 8 Defendant.	10 Warnock-2 Nine Page Document from 30 11 American Pension Corporation Entitled "Money Purchase 12 Retirement Plan"
Tuesday, June 16, 2009  10  11 Deposition of BRIAN WARNOCK, VOLUME I, before	13 Warnock-3 Seven Pages of Handrwitten 33
12 Nancy A. Miani, a Certified Court Reporter, License	Notes  14  Warnock-4 Three Pages of Handwritten 39
14 Jersey at the offices of WITMAN, STADTMAUER, ESQS, 26	15 Notes  16 Warnock-5 Two Pages of Handwritten Notes 45
15 Columbia Turnpike, Florham Park, New Jersey, on	16 Warnock-5 Two Pages of Handwritten Notes 45
16 Tuesday, June 16, 2009, at 10 a.m. 17 18	17 Warnock-6 One-Page Handwritten Letter with 50 Attached Typewritten Letter to 18 Dr. Criscito dated 1/7/91 from Brian Warnock
19 20	19 Warnock-7 Form 5500 for 1999, 18 Pages 54
21 MIANI COURT REPORTING	20 Warnock-8 Form 5500 for 2000, 12 Pages 56
22 CERTIFIED COURT REPORTERS 1741 DANIEL COURT 23 WALL, NJ 07719 (732) 681-4776	21 Warnock-9 One Pages of Handwritten Notes 57 22 With Attached Three Pages of
24 25	Typewritten Notes  23  Warnock-10 Two Pages of Typewritten Notes 63
	24 Warnock-11 Two Pages Reconciliation of 69 25 Trust Assets for 1999
2	4
I APPEARANCES:	1 <u>EXHIBITS</u> 2 EXHIBIT NO. DESCRIPTION PAGE
2 WITMAN, STADTMAUER, ESQS. 26 Columbia Turnpike	3 Warnock-12 Reconciliation of Trust 71 Assets for 2005, One Page
3 Florham Park, NJ 07932 By: STEPHEN M. CHARME, ESQ.	4 Warnock-13 Form 1096 for 2005, Two 75
4 Attorneys for the Plaintiffs	5 Pages 6 Warnock-14 Form 5498 for 2006, One 76
5 KERN, AUGUSTINE, CONROY & SCHOPPMANN, P.C. 1120 Route 22 East	Page 7
6 Bridgewater, NJ 08807 BY: STEVEN KERN, ESQ.	Warnock-15 Copy of Savings Withdrawal 76 8 Slip, One Page
7 AND CHARLES H. NEWMAN, ESQ. Attorneys for the Defendant	9 Warnock-16 Seven Pages of Handwritten 79 Notes
8 ALSO PRESENT: 9	10 Warnock-17 Memo from Brian Warnock 90 11 Dated 9/14/07 with Two Page Attachment
Anthony Casella, M.D. 10	12 Warnock-18 Two-Page Letter to Anthony 101 13 Casella, M.D., from Brian Warnock dated August 28, 2007
11 12	14 Warnock-19 One-Page E-mail from Marysue 104 15 McCarthy dated 7/28/06
13 14 15	16 Warnock-20 Two-Page Letter to Joy M. 107 Mercer, Esq. From Brian 17 Warnock dated 11/13/07
16 17 18	18 Warnock-21 Three-Page Letter to Joy M. 108  Mercer, Esq., from Brian  19 Warnock dated 12/6/07
	20
21 22	21
23	22 23
24	24

1 of 67 sheets

Transcript.  12 answer to it. Do you understand that?  Transcript.  13 A. Yes.  14 Copies of All Exhibits attached to  15 All Transcripts.  16 If All Transcripts.  17 A. Yes.  18 Q. If at some point you feel you need to  18 accommodate you. Do you understand that?  18 Q. I have to ask you the last question.  19 Are you taking any kind of medicine or do  20 you have any kind of physical condition that would  21 stop you from understanding my questions and giving  22 complete and honest answers?  23 A. No.  24 Q. Okay. Could you tell me your educational  25 background, if any, beyond high school.  8  1 B R I A N W A R N O C K,  2 American Pension Corporation, 1375 Plainfield Avenue,  3 Watchung, New Jersey, sworn.  4 DIRECT EXAMINATION BY MR. CHARME:  5 Q. Good morning, Mr. Warnock. My name is  6 Stephen Charme. I represent the plaintiffs in the  7 lawsuit in which you were subpoenaed.  8 Are you represented by counsel today?  9 A. No.  10 Q. Okay, Are you aware that you have a  11 right to be represented by counsel?  12 A. Yes.  13 Q. You've chosen  14 A. I didn't  15 Q. So you've chosen not to be represented by  16 counsel. Is that correct?  17 A. That's correct.  18 Q. Okay. Have you ever had your deposition  19 taken before?  20 A. Yes.  Q. Okay, Have you ever had your deposition  19 taken before?  20 A. Yes.  Q. Okay. Have you ever had your deposition  19 taken before?  20 A. Yes.  Q. Have you taking any kind of medicine or do you have any kind of physical condition that would  18 top you from understanding my questions and giving  20 complete and honest answers?  21 A. No.  22 A. I have a degree in sociology from  23 Montclair State College.  24 A. 1 guess a Bachelor of Science, actually.  5 Social sciences.  6 Q. And what year did you get that?  7 A. 1 1976.  8 Q. Okay. Could you state your date of birth, please.  10 A. April 6th, 1954.  11 Q. Besides the bachelor's degree from  12 A. Yes.  13 A. Yes.  14 A. Yes.  15 Q. Would you tell me your employment  16 background starting when you graduated from		5		7	
3 A. Sure. 4 (None) 6 MOTION TO STRIKE 7 (None) 8 DOCUMENT REQUEST 10 (None) 8 TO Company Transcripts. 11 EXIT BY A Copies of All Exhibits attached to Original Transcripts. 12 EXHBIT ANIALYSIS 15 All Transcripts. 16 Copies of All Exhibits attached to Original Transcripts. 16 Copies of All Exhibits attached to Original Transcripts. 17 A Transcripts. 18 PARIAN WARNOCK, Warneck Warners are poing to be recorded. If I ask you something and you don't understand the question, I would appreciate if you would give me a complete and hones appreciate if you would give me a complete and hones appreciate if you would give me a complete and hones and appreciate if you would give me a complete and hones are to it. Do you understand that? 18 A. Yes. 19 A. Yes. 10 Q. If at some point you feel you need to 15 take a break, please tell me and I will try to 18 accommodate you. Do you understand that? 19 A. Yes. 10 Q. I have to ask you the last question. 10 Are you baking any kind of medicine or do 20 you have any kind of physical condition that would 21 stop you from understanding my questions and giving 22 complete and hones answers? 23 A. No. 24 Q. Okay. Could you tell me your educational 25 background, if any, beyond high school. 25 Stephen Charme. I represent the plainfifs in the 5 stephen Charme. I represent the plainfifs in the 5 stephen Charme. I represent the plainfifs in the 5 stephen Charme. I represent the plainfifs in the 6 stephen Charme. I represent the plainfifs in the 7 lawwit in which you were subpoensed. 26 Q. Okay. Could you tell me your educational 25 background, if any, beyond high school. 27 A Yes. 28 A. Poo. 29 A. Yes. 30 A. No. 31 A. No. 32 A. No. 33 A. No. 34 A. No. 35 A. Yes. 46 A. I have a degree in sociology from 2 months and provide	1	<u>LITIGATION SUPPORT</u>	1	Q. Okay. Let me just give you some	
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10   None    9   A. Uh-hum.		DOCUMENT REQUEST	8	you. Do you understand that?	
11 EXHIBIT ANALYSIS 13 Original Exhibits Attached to Original Transcript. 14 Copies of All Exhibits attached to 15 take a break, please tell me and I will try to 15 take a break, please tell me and I will try to 16 take a break, please tell me and I will try to 17 take a break, please tell me and I will try to 18 accommodate you. Do you understand that? 16 A Yes. 17 A Yes. 18 Q. I have to ask you the last question. 18 A Yes. 19 Are you taking any kind of rendicine or do you have any kind of physical condition that would 20 you have any kind of physical condition that would 21 stop you from understanding my questions and giving 22 complete and honest answers? 23 A. No. 24 Q. Okay. Could you tell me your educational background, if any, beyond high school. 25 background, if any, beyond high school. 26 A Arerican Pension Corporation, 1375 Plainfield Avenue, 3 Watchung, New Jersey, sworn. 3 Watchung, New Jersey, sworn. 4 BRIAN WARNOCK, My name is 6 Stephen Charme. I represent the plaintiffs in the 18 substitution which you were subpoenaed. 4 Are you represented by counsel today? 4 A No. 4 G Q Goday. Are you aware that you have a 11 right to be represented by counsel? 4 A Yesh. 4 A I didn't - 4 A That's correct. 5 Q So you've chosen - 4 A Yesh. 6 Counsel. Is that correct? 7 A That's correct. 8 A Yes. 9 A Yes. 10 A Yes. 11 G Q Goday. Have you ever had your deposition 18 background starting when you graduated from college please. 12 A Yes. 13 A Yes. 14 A How the fore? 15 A No. 16 Counsel. Is that correct? 17 A That's correct. 18 Q Goday. Have you ever had your deposition 18 background starting when you graduated from college please. 19 C God God What kind of case? 20 A A About 2 or 3 years ago. 1 was a case 21 Life Insurance Company in their Pension Department for to and a half years. Then I worked in Bankers National 2 Life Insurance Company in their Pension Department for to 2 and a half years. Then I worked in Bankers National 2 Life Insurance Company.		-	9	A. Uh-hum.	
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Copies of All Exhibits attached to All Transcripts.  15 take a break, please tell me and I will try to accommodate you. Do you understand that? 16 accommodate you. Do you understand that? 17 A. Yes. 18 Q. I have to ask you the last question. 19 Are you taking any kind of medicine or do you have any kind of physical condition that would stop you from understanding my questions and giving 22 complete and honest answers? 23 A. No. 24 Q. Okay. Could you tell me your educational background, if any, beyond high school. 8 1 B R I A N W A R N O C K, American Pension Corporation, 1375 Plainfield Avenue, Watchung, New Jersey, sworn. 4 DIRECT EXAMINATION BY MR. CHARME: 5 Q. Good morning, Mr. Warnock. My name is 6 Stephen Charme. I represent the plaintiffs in the 1 lawsuit in which you were subpoenaed. 8 Are you represented by counsel today? 9 A. No. 10 Q. Okay. Are you aware that you have a 11 right to be represented by counsel? 12 A. Yeah. 13 Q. You've chosen 14 A. I didn't 15 Q. So you've chosen not to be represented by 16 counsel. Is that correct? 17 A. That's correct. 18 Q. Okay. Have you ever had your deposition 19 taken before? 20 A. Yes. Q. How recently was the last time? Q. What kind of case? Q. A About 2 or 3 years ago. It was a case		Transcript.	13	A. Yes.	
All Transcripts.  All Transcripts.  All Transcripts.  All Transcripts.  All Transcripts.  All Transcripts.  Accommodate you. Do you understand that?  A. Yes.  A. Yes.  A. Yes.  Are you taking any kind of medicine or do you have any kind of physical condition that would stop you from understanding my questions and giving complete and honest answers?  A. No.  An No.  Are you taking any kind of physical condition that would stop you from understanding my questions and giving complete and honest answers?  A. No.  A. No.  A. No.  Are you aware that you have a right to be represented by counsel to day?  A. No.  Are you chave any kind of physical condition that would stop you from understanding my questions and giving complete and honest answers?  A. No.  A. No.  A. No.  A. I have a degree in sociology from and your defect and the your educational background, if any, beyond high school.  A. I have a degree in sociology from and your defect and you dest that and you have a gent and you were subponenced.  A. A. I guess a Bachelor of Science, actually.  Social sciences.  A. A. 1976.  A. April 6th, 1954.  Q. Besides the bachelor's degree from and your deposition and your deposition are taken before?  A. That's correct.  A. No.  Q. What kind of case?  A. About 2 or 3 years ago.  Life Insurance Company in their Pension Department for to and a half years. Then I worked in Bankers National Life Insurance Company in their Pension Department for to and a half years. Then I worked in Bankers National Life Insurance Company in their Pension Department for to and a half years. Then I worked in Bankers National Life Insurance Company in their Pension Department for to and a half years.  A. About 2 or 3 years ago.  A. About 2 or 3 years ago. It was a case	14	Carina of All Exhibits attached to	14	Q. If at some point you feel you need to	
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18			18	Q. I have to ask you the last question.	
21 stop you from understanding my questions and giving complete and honest answers? 22 A. No. 24 Q. Okay. Could you tell me your educational background, if any, beyond high school.  8 1 B R I A N W A R N O C K, 2 American Pension Corporation, 1375 Plainfield Avenue, 3 Watchung, New Jersey, sworn. 4 DIRECT EXAMINATION BY MR. CHARME: 5 Q. Good morning, Mr. Warnock. My name is 6 Stephen Charme. I represent the plaintiffs in the 7 lawsuit in which you were subpoenaed. 8 Are you represented by counsel today? 9 A. No. 10 Q. Okay. Are you aware that you have a 11 right to be represented by counsel? 12 A. Yeah. 13 Q. You've chosen 14 A. I didn't 15 Q. So you've chosen not to be represented by 16 counsel. Is that correct? 17 A. That's correct. 18 Q. Okay. Have you ever had your deposition 19 taken before? 20 A. Yes. Q. How recently was the last time? A. Maybe 2 or 3 years ago. 21 stop you from understanding my questions and giving complete and honest answers? 23 A. No. 24 Q. Okay. Could you tell me your educational background, if any, beyond high school.  8 A. I have a degree in sociology from 2 Montclair State College. 3 Q. I s that a BA? 4 A. I guess a Bachelor of Science, actually. 5 Social sciences. 6 Q. And what year did you get that? 7 A. 1976. 8 Q. Okay. Could you state your date of birth, please. 10 A. April 6th, 1954. 11 Q. Besides the bachelor's degree from 12 Montclair was it Montclair State? 13 A. Yes. 14 Q. Have you taken any other advanced 15 courses? 16 A. No. 17 Q. Wouldy you tell me your employment background starting when you graduated from college please. 20 A. I worked for Mutual Benefit Life 21 Insurance Company in their Pension Department for to and a half years. Then I worked in Bankers National 22 Life Insurance Company. 23 Q. So it's two and a half years, say, to	1		19	Are you taking any kind of medicine or do	
22 complete and honest answers? 23 A. No. 24 Q. Okay. Could you tell me your educational background, if any, beyond high school.  8 1 B R I A N W A R N O C K, 2 American Pension Corporation, 1375 Plainfield Avenue, 3 Watchung, New Jersey, sworn. 4 DIRECT EXAMINATION BY MR. CHARME: 5 Q. Good morning, Mr. Warnock. My name is 6 Stephen Charme. I represent the plaintiffs in the 7 lawsuit in which you were subpoenaed. 8 Are you represented by counsel today? 9 A. No. 10 Q. Okay. Are you aware that you have a 11 right to be represented by counsel? 12 A. Yeah. 13 Q. You've chosen 14 A. I didn't 15 Q. So you've chosen not to be represented by 16 counsel. Is that correct? 17 A. That's correct. 18 Q. Okay. Have you ever had your deposition 19 taken before? 20 A. Yes. Q. How recently was the last time? A. Maybe 2 or 3 years ago. 21 Q. What kind of case? 22 A. About 2 or 3 years ago. It was a case  22 complete and honest answers? 23 A. No. 24 Q. Okay. Could you tell me your educational background, if any, beyond high school.  8 A. I have a degree in sociology from 4 A. I have a degree in sociology from 4 An I have a degree in sociology from 4 An I prove a degree in sociology from 4 An I have a degree in sociology from 4 A. I have a degree in sociology from 4 A. I have a Backelor of Science, actually. 5 Social sciences. 6 Q. And what year did you get that? 7 A. 1976. 8 Q. Okay. Could you state your date of 9 birth, please. 10 A. April 6th, 1954. 11 Q. Besides the bachelor's degree from 12 A. Yes. 13 A. Yes. 14 Q. Have you taken any other advanced 15 courses? 16 A. No. 17 Q. Would you tell me your employment 18 background, starting when you graduated from college 19 please. 20 A. I worked for Mutual Benefit Life 21 Insurance Company in their Pension Department for to 22 and a half years. Then I worked in Bankers National 23 Q. What kind of case? 24 A. About 2 or 3 years ago. It was a case	19		20	you have any kind of physical condition that would	
22 23 A. No. 24 Q. Okay. Could you tell me your educational background, if any, beyond high school.  8 1 BRIAN WARNOCK, 2 American Pension Corporation, 1375 Plainfield Avenue, 3 Watchung, New Jersey, sworn. 4 DIRECT EXAMINATION BY MR. CHARME: 5 Q. Good morning, Mr. Warnock. My name is 6 Stephen Charme. I represent the plaintiffs in the 7 lawsuit in which you were subpoenaed. 8 Are you represented by counsel today? 9 A. No. 10 Q. Okay. Are you aware that you have a 11 right to be represented by counsel? 12 A. Yeah. 13 Q. You've chosen 14 A. I didn't 15 Q. So you've chosen not to be represented by 16 counsel. Is that correct? 17 A. That's correct. 18 Q. Okay. Have you ever had your deposition 19 taken before? 20 A. Yes. Q. How recently was the last time? 21 A. Maybe 2 or 3 years ago. 22 Q. What kind of case? 23 Q. What kind of case? 24 A. About 2 or 3 years ago. It was a case	1		21	stop you from understanding my questions and giving me	
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25   background, if any, beyond high school.   8     1   BRIAN   WARNOCK,   2   American Pension Corporation, 1375 Plainfield Avenue,   3   Watchung, New Jersey, sworn.   3   Q. Is that a BA?   4   A. I guess a Bachelor of Science, actually.   5   Social sciences.   6   Q. And what year did you get that?   7   A. 1976.   8   Q. Okay. Are you aware that you have a   10   A. April 6th, 1954.   11   Q. Besides the bachelor's degree from   12   A. Yeah.   12   A. Yeah.   13   Q. You've chosen   14   A. I didn't   15   Q. So you've chosen not to be represented by counsel. Is that correct?   16   A. That's correct.   17   Q. Would you tell me your employment   18   background starting when you graduated from college   19   please.   20   A. I worked for Mutual Benefit Life   21   Insurance Company in their Pension Department for to 21   22   A. Maybe 2 or 3 years ago.   12   Q. So it's two and a half years, say, to	1		24	Q. Okay. Could you tell me your educational	
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24 A. About 2 or 3 years ago. It was a case 24 Q. So it's two and a half years, say, to	1		23		
	- 1		24		
25 what, 1979?	1	involving work.			

		9 1			ן דר
	A.	To 1979, yeah.	1	Α.	I was young back then.
1	Q.	Okay. I'm sorry. What was the next one?	2	Q.	How did you come to know APC had a
2	Q. A.	Bankers National Life Insurance Company.	3		
3	Q.	What did you do there?	4	Α.	A gentleman I worked with, named Ray
	Q. A.	Again, in the Pension Department. The	5	Miller, wor	rked with me at Mutual Benefit Life, and he
6	ERISA Uni		6	6 had worked there, and he was leaving for another	
7	Q.	Is that what it was called?	7	position.	
8	A.	Yeah.	8	Q.	He was leaving APC?
9	Q.	How long did you work there?	9	A.	He was leaving APC and he called me and I
10	Α.	Well, until 1981.	10	took his jo	ob, basically.
11	Q.	Okay.	11	Q.	Okay. What was the job that you took?
12	Д. А.	And then the present occupation, American	12	A.	Administering pension plans.
13		orporation.	13	Q.	And since you joined APC in 1981, have
14	Q.	So you joined I'm going to call them	14	your job r	responsibilities changed at all?
15	APC. Is t		15	A.	They've been increased.
16	A.	Yes.	16	Q.	Tell me how they've increased.
17	Q.	You joined APC in 1981?	17	Α.	Well, I'm the vice-president now. When I
18	A.	That's correct.	18		nere, it was the owner and me, a secretary
19	Q.	Let's go back to Mutual Benefit Life	19		t-timer, and now we have nine people. So
20		e. Did you have any job title there?	20		president, myself, and one, two three
21	Α.	Reporting and disclosure technician,	21	administr	ators, a part-time administrator.
22	actually.		22	Q.	Who is currently the president
23	Q.	What did your job consist of while you	23	Α.	And office staff. Peter Coughlan,
24	were the		24	C-O-U-G-	-H-L-A-N. And he owns the company.
25	Α.	We prepared documents for pension plans,	25	Q.	And you're the vice-president?
1		10			12
1 1	ERISA do	ocuments. And the 5500 forms.	1	Α.	Yes.
2	_	Okay.	2	Q.	And then you said there were three, what,
3	A.	Which is the annual report you file for a	3	administr	1
4	pension	olan.	4	Α.	Right.
5		When you say who do you file that	5	Q.	Okay.
6	annual re	eport with?	6	Α.	Third party administrators we call them.
7	A.	It's the IRS and Department of Labor.	7		Who are they?
8	Q.	So you worked on preparing Form 5500's	8		Dominique Eck, Joyce Plesnarski, and
9	while yo	u were at Mutual Benefit Life?	9	_	ankenbaum.
10	A.	Yes.	10		Are the other employees just clerical
11	Q.	Okay. Why did you leave that company?	11	staff?	.,
12	Α.	I guess more money.	12	_	Yes.
13	Q.	Good. Okay. What did you do when you	13		Okay. What first of all, how long has
14	went to	Bankers National Life?	14		ue Eck been there?
15	5 A.	I was the head of the Keogh Unit.	15		20 years. 20 plus.
16	Q.	Head of the Keogh Unit?	16		And what about Joyce?
17	7 A.	ERISA Department slash Keogh, and they	17		About seven.
18	3 had a ni	ımber of Keogh plans, which is a pension plan	18		And Stuart
19	for self-	employed individuals, and we did not do 5500	19		Right around the same. I think it's
20	) forms th	nere. But it was mostly involved with	20		d seven. Joyce would be eight, Stuart would
ı	annuitie	s, maintaining the annuities, which we used to	21		n. I could be off. Okay. Do you do when you went to APC,
1		e plans.	22		-
23	3 Q.	Okay. How come you left there?	23		do Form 5500's again? Yes. But more involved than just the
24	4 A.	More money.	24		We would also prepare the annual reports,
2	5 Q.	Okay.	25		07/02/2009 08:27:21 AM

15 13 fill it out, then that's enough. You know, we don't 1 participant statements. 1 2 insist on the backup. Q. Tell me if you would, please, what an 2 Q. Okay. 3 3 annual report is. Α. 4 I should just add that a lot of Annual report, you're basically doing A. companies, they have the brokerage statements sent to 5 reconciliation of the assets for the year. Very short 6 us automatically so we just receive them. one. It's not an audit. 6 7 Q. So you've worked on the annual report, 7 Q. Okay. which includes participant statements, the Form 8 A. And then we would prepare a report 8 9 5500's? allocating -- we would calculate the contribution, and 9 Α. Right. the report would then allocate the contribution, the 10 10 Q. What else? proportionate share of the plan earnings or losses. 11 11 We prepare plan documents. On defined 12 Α. The annual report would do that? 12 Q. benefit plans it's a little bit different. There's an It's the annual report, and out of the 13 A. 13 actuarial report that you have to prepare. 14 annual report, the participant statements would come. 14 15 Q. Anything else that you do there? Okay. From whom do you get the 15 Q. A. We provide the forms for termination 16 information to prepare annual reports? 16 claims. If somebody terminates employment, we would 17 We get it from the client. Α. 17 give them the forms. The employee completes the forms 18 Q. Now, you say it's not an audit. 18 saying what they want done with their money, whether 19 19 Α. It's not an audit, no. they want it rolled over, they want it in cash, taxes Do you verify the information you get 20 Q. 20 21 withheld, that kind of thing. 21 from the client? Not necessarily. We ask them, we send a 22 Q. I think earlier when you were talking A. 22 about Dominique, Joyce, and Stuart, you told me they 23 questionnaire, we say give us the information. 23 24 were third party administrators. There's a questionnaire for them to fill it out, we 24 25 A. Right. ask them to provide backup, copies of the brokerage 25 16 statements. Sometimes they do, sometimes they don't. Q. I thought APC, itself, was the third 1 party administrator. Am I mistaken? 2 We don't, you know, insist on it. 2 3 Well, I mean, they have titles, but we So if they don't provide copies of the 3 call them pension consultants. There's no special brokerage statements as backup, you don't insist on 4 significance to their title. I think one is called a 5 that? 5 6 consultant, one is an analyst. 6 A. No. Do you know what a third party And based on your experience, are you 7 Q. Q. 7 able to say, you know, what percentage of clients do 8 administrator is for a pension plan? 8 A. provide you with brokerage statements as backup versus 9 Yes. 9 Q. Okay. Tell me what your understanding of 10 10 what percentage don't? that is. I'd say more do. Probably 75, 80 percent 11 A. 11 12 A. Third party administrator would be -do. 12 Do provide you with brokerage statements? would assist the client, the plan trustees in 13 Q. 13 preparing the reports. We don't have -- we are not 14 A. Do provide that, yes. 14 trustees. We are not the plan administrators. So we Okay. Are you aware why the other, say, 15 15 Q. 16 are a little more than clerical, but we're basically remaining 20 percent do not? 16 doing the paperwork for the employer as the third No, usually it's just a time thing, that 17 17 they're trying to get it done quickly and don't want party administrator. 18 18 Q. Do you do work sometimes with the 19 to take the time to copy them. 19 20 trustees of plans? Okay. And if they don't want to take the 20 Q. On -- 99 percent of our plans the trustee 21 A. time to copy them, you don't ask them to send you 22 is the owner of the company. those statements later on when they do have the time? 22 23 Q. Have you heard of Diagnostic & Clinical

23

24

A.

Q.

No.

Okay.

No. They provide the questionnaire, they

24

25

Cardiology?

A.

Yes.

17

- 1 Q. When did you first hear of that company?
- 2 A. We have been working on them, really
- 3 since I started in -- started at American PensionCorporation.
  - Q. You started there in 1981, correct?
- 6 A. Yes.
- 7 Q. At the time you started there, was
- 8 Diagnostic & Clinical Cardiology already a client of 9 APC?
- 10 A. It was a client for, I believe, since 11 1980. Right before I started.
- 12 Q. Before you started, who was working on 13 the account?
- 14 A. Probably Ray Miller. I couldn't -- I 15 would say I don't know.
- 16 Q. When you joined APC in 1981, did you
- 17 start doing work with Diagnostic & Clinical
- 18 Cardiology?
- 19 A. I don't recall specifically --
- 20 Q. Okay.
- 21 A. -- if I worked on that plan or not.
- 22 Q. At some point after you joined, whether
- 23 it was 1981, but at some point did you ever work on
- 24 that plan?

3

4

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6

12

25 A. Yes.

18

- 1 Q. Okay. When you worked on that plan, tell 2 me what kinds of things you did.
  - A. We would calculate the contributions for the employee census --
  - Q. Let's start with that. Tell me what an employee census is, please.
- 7 A. Employee census is a list of everybody 8 working there, their names, dates of birth, dates of 9 employment, dates of termination.
- 10 Q. Okay. And why do you need that 11 information?
  - A. We need it to calculate the contribution.
- 13 Q. Okay. Do you need any other information 14 to calculate the contribution?
- 15 A. No -- well, the plan document would have 16 the formula. The formula for calculating the 17 contribution is in the document.
- 18 Q. You would need the compensation for the 19 employees, right?
- 20 A. Right, names, dates of birth, dates of employment, and their annual compensation.
  - Q. And APC would do the calculations?
- A. We would do the calculation. Originally it was a money purchase plan, which had a fixed
- it was a money purchase plan, which had a fixedcontribution, it was like 15 percent, something like

- 19
- that. That's an example. So then we would, everybody
- 2 would just get a straight 15 percent. It was amended
- 3 over the years to a profit sharing plan, and they call
- 4 it a new comparability plan, where it's a
- 5 discretionary contribution. So then we would work
- 6 with, in this case, Dr. Casella, and he would give us
- 7 the census, and basically tell us what he's looking
- 8 for in terms of the contribution, which would be
- 9 typically, if you want to maximize the doctors, we
- 10 want to give the rest of the employees 5 percent.
- 11 Q. Do you recall when it changed over to a 12 profit sharing plan?
- 13 A. Not -- no, I don't. No. I'd be
- 14 quessing.
- 15 Q. If I told you that it changed over
- 16 sometime around 2005, would that refresh your
- 17 recollection?

18

- A. No, I don't think that would be correct.
- 19 Q. You don't think that would be correct?
- 20 A. That would not be correct. Before then,
- 21 certainly before 2005.
- 22 Q. You think it changed over to a profit
- 23 sharing plan before 2005?
- 24 A. For sure, yes.
- Q. Do you think it changed over to a profit

20

- 1 sharing plan before 2000?
- 2 A. Yes
  - Q. Okay. But you don't remember the year?
- 4 A. I don't remember the year, no.
- 5 Q. You said -- I'm going to refer to
- 6 Diagnostic & Clinical Cardiology as DCC for short.
- 7 Okay?

3

9

- 8 A. Yes.
  - Q. You said you would get information to
- 10 prepare an employee census, correct?
- 11 A. We would send the census from the year
- 12 before, generally from our computer, which has
- 13 everybody that we know of from the year before, and
- 14 then we would send it and they would fill out the
- 15 census, basically just updating. It's already got the
- 16 names, dates of birth, dates of employment. Then they
- in that the state of the state
- 17 would provide us with the current year's salary and
- 18 any new people, any terminations.
- 19 Q. Okay. Is there anyone at DCC who you -- 20 withdrawn.
- 21 Were you, yourself, personally involved
- in preparing employee censuses for DCC as opposed to someone else in the office?
- A. When you say preparing the census, the census was completed by Diagnostic, not by us.

Ψ.

21 23 Q. 1 Let me say it differently. okay, and they would make the contribution to the 2 After you sent Diagnostic, you said the 2 plan. old census and asked them to update names, addresses, 3 3 Let me ask you a question. When you say 1 and compensation, correct? 4 he would receive it and say that's okay, did you ever speak to Dr. Casella personally about calculations of Α. Right. 6 Q. Is that something that you did? 6 employee contributions? 7 A. 7 Did I mail it out? Α. I'm sure I did. Yeah. Q. 8 Yes. 8 When you say you're sure you did, do you A. 9 9 No. mean you can actually recall something, or you think Q. 10 So was someone assigned to the DCC 10 you may have? 11 account to do that? 11 MR. KERN: I'm going to object. You've A. Well, that would just be a clerical 12 12 already asked the question, he already answered it. 13 function, you know. 13 He's your own witness. Q. Okay. And when it came back, whose job 14 MR. CHARME: He's not my witness, he's a 14 was it to review the updated information? 15 15 third party witness. 16 Primarily Dominique's. I may have done 16 You can answer. 17 17 it. Sometime over the last, you know -- since 1981, I A. I don't recall any specific conversation may have been involved with a year or something, but with Dr. Casella about calculating the contribution. 18 18 19 19 general Dominique was the one who did it. Okay. Now, you said that was step one, 20 20 getting the census back and calculating the If there were any questions about the 21 information that was received, do you know who APC 21 contribution. What was the next step? 22 spoke to at DCC? 22 The next step would be preparing the 5500 A. 23 Dr. Casella. 23 forms, the participant statements. In this case, 24 Q. And that was in connection with the 24 there was -- it was a little bit different because 25 25 employee census? several -- five or six of the doctors had separate 22 Α. Yes. accounts where they had their own investments, and 1 Q. What else did APC do for DCC? then they would -- they would provide us the 2 3 Α. Okay. We would, once we received the 3 information on their own personal account, how they census back, it was kind of a two step thing. First invested the money. The participants -- and this 4 5 we would calculate the contribution. Okay. And the changed. Okay. Eventually it changed where the contribution, like I said, once it turned to a profit participants all have a separate brokerage account. 6 sharing plan especially, we would calculate it, give 7 Prior to that, the participants, their assets were in it to Dr. Casella, he would look at it and say, you one commingled account with several of the doctors, 8 9 know, yes, sounds okay, you know, because profit 9 which would be the newer ones, the other participants 10 sharing is a discretionary contribution. 10 and Mario Criscito, so we did --Q. Let me understand. After you got the 11 Let me just stop you for a minute so we 11 12 employee census back, you would calculate the 12 can clarify some things. A. contributions, and then the contributions that had 13 Sure. 13 14 been calculated would be sent to Dr. Casella for his 14 When you joined APC in 1981, were you review? 15 personally involved in preparing the Form 5500 for 15 16 Α. Right. 16 DCC? 17 Q. And who did that? 17 I don't recall if I ever did it. I Α. Dominique. 18 probably did at some point in time as people, you 18 19 Q. Okay. 19 know, staff changed and everything, you know. A. Okay. Then. 20 20 Do you recall when you, you, personally, 21 MR. KERN: Is Dominique a woman or a man? first got involved in preparing a Form 5500 for DCC?

22

23

24

THE WITNESS: A female.

MR. KERN: So it's D-O-M-I-N-I-Q-U-E?

And Dr. Casella would see it, say that's

THE WITNESS: Yes, Eck, E-C-K.

\_2 23

24

25

Α

I don't mean doing actually typing, I mean just

the full annual report on Diagnostic. I would have

I don't recall that I ever actually did

gathering information.

Α.

14

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23

157

- APC had in its files the year end statement from 1
- Morgan Stanley for the year 1999, correct? 2
- Year end statement of 1999. No, that is 3 Α. 4 not correct.

(There is a discussion off the record.)

- Did you have any statements for the year Q. 6 2000 prior to the filing of this Form 5500? 7
- Yes, we did. They didn't realize they 8 A. 9 were in the file.
  - What did you have? Q.

10

21

- We had monthly statements that were Α. 11
- coming in, starting, I believe it was March of 2000. 12
- When you looked at those statements, did 13 it suggest a discrepancy between what was reported on 14
- Warnock-7 and what was most likely in the account at 15 the end of 1999? 16
- MR. CHARME: I object to the form. At 17 what point in time? 18
- That would be my question, too. At what 19 Α. point in time? When we did this report, no, we had 20 not even looked at those pages at all.
- My question is had you looked at the 22 Q.
- March statement and February statement from 2000, 23
- would that have set off any kind of bells or whistles 24
- or alarms in anybody's head concerning the accuracy of 25
  - 158
  - the report which was ultimately filed in October of 2 2000?
  - MR. CHARME: I object to the form. 3
  - Well, for one thing, the statements would 4
  - have been in 2000, in our file for the year 2000, 5
  - which is how we keep our filing, so we would not have 6
  - even looked in that file when we were preparing the 7
  - 1999 5500 forms. 8
  - How about when you were preparing the Q. 9 2000 5500 report, would you have that information 10
  - available to you then? 11
  - It was then in there, and it just was A. 12 overlooked. We did not even realize they were in the 13 14 file.
  - If somebody had looked at it, would that Q. 15 have, at a minimum, set off an inquiry as to a 16
- possible discrepancy between the 1999 filing and the 17
- true amount in the account? 18
- Had it been looked at, yes, it would have 19 A.
- raised a question. 20
- When you started getting these Q. statements, did anyone inquire as to why you were **∠2**
- getting them or why you hadn't gotten them in the 23
- 24 past?

25

No, the statements come in from Morgan Α.

- Stanley, there's a stack of them that come in like
- this for each month for each participant, and they
- just get filed away. The reason we knew they were 3
- getting these statements, they were coming in, because 4
- they were getting, they had just set up these separate 5
- accounts for the new employees, that's why we were 6
- getting statements. We saw them come in, that's good, 7
- we're getting them. No one looked at them. 8
- Q. But you also got them for the commingled 9 account? 10
- We did get them. We didn't know we were 11 Α. getting them for the commingled account, but yes, we 12 did get them. 13
  - Nobody was hiding them from anybody? Q. MR. CHARME: I object to the form.
- A. They came to us. 16
- Let me put it to you this way: You had Q. 17
- all of the information you needed in your file by, at 18
- the earliest, March of 2000, and certainly by the 19
- beginning of 2001, had somebody looked, to realize 20
- that there was probably an error or some discrepancy 21
- in that 1999 5500 filing, correct? 22
  - Had we looked at the statement, the
- December 31st, 2000 statement, then we would have, we 24
- would have realized it was a mistake. We didn't look 25
  - 160

159

- at it. We never received them before, thought we were 1
- only getting the new ones. Sounds easy to say, gee, 2
- how did you miss that. We did. We have a 3
- participant's report, we went through, here's the
- guy's name, check, check, never even noticed there was
- a pile of papers this thick, but, yes, had we looked
- at it, had we realized it was in there, we had an 7
- extra statement in there and that that was it, it 8
- would have raised a question. 9
- The note on Warnock-7 is attached to the 10 statement from Morgan Stanley. Do you know which 11 statement that was? 12
- MR. CHARME: Did you mean 17? 13
  - MR. KERN: Is this 17?
- MR. CHARME: This is 7. 15
- (There is a discussion off the record.) 16
  - Q. Look at Warnock-17.
- 18 Α. Okay.
- You got it? 19 Q.
- 20 Α. Yes.
- Do you know what statement that was, that Q. 21
- note was attached to? 22
- That's the December 31st, 2000 statement, 23 A.
- we received that in January of 2001. 24
  - Before filing the 2000 5500, correct?

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161

- 1 A.
- And before filing the annual, before 2 Q.
- preparing the annual reports, correct? 3
  - For 2000, yes. Α.
  - Is this your handwriting? Q.
- That's my handwriting. A. 6
  - You say how could we miss that, correct? Q.
- 8 Α. Yeah.
- Why did you write "how could we miss Q. 9
- this"? 10

7

- How could we miss this. Dr. Casella Α. 11
- found this in the file, and I said to Dominique, how 12
- did we miss this. 13
- This was an important document? 14 Q.
- Well, if we had found it, as your A. 15
- questions previously were, it would have certainly set 16 off an alarm, yes. 17
- And whatever issues we're dealing with Q. 18 today could possibly have been addressed and resolved 19 20 at that time?
- MR. CHARME: I object to the form. 21
- I certainly would have asked what's this, A. 22
- you know. 23
- And I take it if you couldn't get 24 Q.
- adequate or reasonable answers to your questions that 25

- you would have raised in 2000, had you not missed this
- document, you would have taken steps to let
- appropriate people know that there was a problem, 3
- correct? 4

9

- If we were off seven million dollars, 5
- yes. We wouldn't have just said, well, I guess that's 6
- 4,000 that went in by accident, yes. We're talking 7
- about a difference. 8
  - What would you have done, if you --Q.
- Well, I would have first -- well, I would 10
- have asked Mario what's this. That's what I would 11
- have done. 12
- And if you couldn't get adequate, 13
- responsible responses, what would you have done? 14
- If he had said mind your own business, 15
- then I think I would have -- well, I'm sure I would 16
- have gone to Dr. Casella and said something to him. 17
- Certainly, by this point in time, you had Q. 18
- all the information you needed had you looked at it to 19
- initiate an inquiry in an attempt to resolve the 20
  - discrepancy between the information you received as to
- the 1999 year end balance and the monies in the Morgan 22
- Stanley account, correct? 23
- If we had noticed this, we probably would 24
- have raised the question.

Q. Probably --

- Well, we would have, but unless we were 2 A.
- examining each statement, we wouldn't have asked the 3
- question on January 1st, 2001, but when we were doing 4
- the annual report, which would probably have been 5
- October, 2001, at that point, we would have said 6
- something is wrong here and we would have raised the 7
- 8 question, yes.
  - Q. No question about that, correct?
- There's no question about that. We would A. 10 11 definitely have raised the question.
  - Are you aware of any efforts by Dr.
- Criscito to keep you from becoming aware of the 13
- information on the statements that you received on the 14
- commingled -- received from Morgan Stanley concerning 15
- the commingled account? 16
- I don't think it was his intention that 17
- we receive these, but I don't know that. They did 18
- stop coming. They didn't continue to come. 19
- But they came for a while, correct, for 20 Q.
- 21 about a year?
- They came for about a year, and I think 22 A.
- -- I would have to check the file, but I have a 23
- feeling that's the last one we got. 24
  - When they stopped coming, did you inquire Q.

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as to why? 1

- We didn't even know they were in there 2
- until Dr. Casella found them. So there was a one year 3
- window to find them in doing that 2000 report. If it
- wasn't found in that year, we wouldn't have found 5
- 6 them.
- 7 To your knowledge, did Dr. Criscito ever
- advise Morgan Stanley that they were not to send you 8
- 9 these reports?
- Somebody told Morgan Stanley to stop 10 Α.
- sending them. I don't know who. 11
- Well, during the year you got them, were 12 they sent contrary to the direction from Dr. Criscito, 13
  - as far as you know?
- Morgan Stanley was supposed to send us A. 15
- all the new separated accounts for all the 16
- participants. That's what they were supposed to send 17
- us. Whether Dr. Criscito told them to send us this or 18
- not, you would have to ask Morgan Stanley that. 19
- Okay. Let's play with some nomenclature Q. 20 for a while. 21
- By the middle of 2000, as I understand 22
- it, all of the monies belonging to participants other 23
- than Dr. Criscito were supposed to be out of this 24
- commingled account, correct? 25

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185
   answered.
1
               No, that -- the contribution receivable,
2
         A.
   yes, that came from us.
               MR. KERN: We're going to need to stop
    now and have to come back.
               (There is a discussion off the record.)
6
               (At 3:45 p.m., the deposition is
7
    adjourned.)
8
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              CERTIFICATION
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I, NANCY A. MIANI, a Certified Court Reporter and a Notary Public, License No. XI00814, do hereby certify that the foregoing witness, BRIAN WARNOCK, was duly sworn by me on the date indicated, and that the foregoing is a true and accurate transcription of my

 $\ensuremath{\mathrm{I}}$  further certify that  $\ensuremath{\mathrm{I}}$  am not employed by nor related to any party to this action.

NANCY A. MIANI, C.S.R. LICENSE NO. XI00814

stenographic notes.